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California Bank & Trust

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re	)	Case No. 14-03171-MM11
)	
	)	OBJECTION BY CALIFORNIA BANK &
	)	TRUST TO AMENDED MOTION FOR
	)	ORDER AUTHORIZING USE OF CASH
	)	COLLATERAL
PUREFITNESS CARLSBAD, INC.,)	
	)	Date: June 17, 2014
	)	Time: 9:00 a.m.
Debtor.	)	Dept. 1, Room 218
	)	Place: 325 West F Street, San Diego, CA
	)	92101

California Bank & Trust, a California corporation ("Bank"), creditor herein, hereby objects to the amended motion for order authorizing use of cash collateral filed on May 21, 2014. [Docket no. 47] ("Motion") and the Debtor's Supplemental Brief filed on June 9, 2014. [Docket no. 64 ("Brief").]

I.

FACTS

In the Brief, Debtor asserts that the Bank is an unsecured creditor because Banco Popular has a senior lien on inventory and accounts. The Debtor fails to note that the Bank also has a security interest in "Any and all bank accounts of Borrower or in which Borrower has an interest held at Lender." [Proof of Claim no. 5 filed May 21, 2014, p. 6.] The Debtor's Amended Schedule B indicates that the Debtor had \$63,800 on deposit at the Bank as of the petition date. The Bank believes, subject to the Debtor's testimony at the initial meeting of creditors, that this number is too high, and is likely approximately

1 \$5,000, calculated as follows:

2	Petty Cash Account	*****2611	\$ 25.73
3	General Account	*****8521	\$2,056.66
4	Credit Card Account	*****1031	\$2,795.96
5	Total		\$4,878.35

6 Thus, the Bank does have an interest in cash collateral and thus the Motion should be denied as
 7 to these funds as the Debtor has offered no adequate protection. Indeed, it would be difficult to offer
 8 meaningful adequate protection to the Bank for use of its cash collateral, given the fact that the Debtor's
 9 equipment, inventory and accounts are encumbered with senior liens and liens on their proceeds.

10 As previously stated, the Bank does not consent to the use of its cash collateral, particularly to
 11 make payments of "management fees" of \$3,500 monthly to "PF Holding" (presumably PureFitness
 12 Holdings Company, Inc.) be paid \$3,500 monthly for "management fees." [Motion, Docket 47-1, p. 2.]
 13 Similarly, the Debtor's amended business income and expenses filed on May 17, 2014 lists \$3,500 for
 14 "management fees-PF Holing." [sic]. [Docket no. 33.]

15 III.

16 CONCLUSION

17 The Motion should be denied as to the Bank's cash collateral, which should be segregated in a
 18 separate interest-bearing accounts pending any further motion by the Debtor to use it.

19
 20 Dated: June 13, 2014

PYLE, SIMS, DUNCAN & STEVENSON
 A Professional Corporation

21
 22 By: /s/ Peter L. Duncan
 23 Peter L. Duncan
 24 Attorneys for Creditor California Bank & Trust
 25
 26
 27
 28

CERTIFICATE OF SERVICE

In re PUREFITNESS CARLSBAD, INC., Debtor
Bk Case No. 14-03171-MM11

I, the undersigned whose address appears below, certify that I am, and at all times hereinafter mentioned, more than 18 years of age; that on June 13, 2014, I served a true copy of the within:

1. OBJECTION BY CALIFORNIA BANK & TRUST TO AMENDED MOTION FOR ORDER AUTHORIZING USE OF CASH COLLATERAL

BY THE COURT VIA NEF: Pursuant to controlling General Order(s) and in accordance with the Administrative Procedures and Guidelines for Electronic Filing, the foregoing document(s) will be served by the Court via Notice of Electronic Filing ("NEF") and hyperlink to the document. On June 13, 2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and the persons listed below are on the Electronic Mail List to receive NEF transmission at the email address listed:

Haeji Hong Haeji.Hong@usdoj.gov, USTP.Region15@usdoj.gov, tiffany.l.carroll@usdoj.gov
Ann Lee alee@grahamvaagelaw.com
Julian McMillan julian@mcmillanlawgroup.com,
MLGECFMAIL@GMAIL.COM; shelby@mcmillanlawgroup.com; leslie@mcmillanlawgroup.com
United States Trustee ustp.region15@usdoj.gov

U.S. MAIL, FIRST CLASS, POSTAGE PREPAID ON THE PERSONS LISTED BELOW:

I served a copy on the person(s) listed herein below, by placing a true copy of each document in a separate envelope addressed to each addressee, respectively, as follows:

<i>(Debtor)</i>	<i>(Debtor's Attorney)</i>	<i>(Request for Special Notice)</i>
Purefitness Carlsbad, Inc.	Julian McMillan	Banco Popular North America
701 B Street Suite 366-368	McMillan Law Group	Graham • Varge LLP
San Diego, CA 92101	2751 Roosevelt Road	Attn: Susan L. Vaage
	Suite 204	500 North Brand Boulevard
<i>(Request for Special Notice)</i>	San Diego, CA 92106	Suite 1030
<i>(United States Trustee)</i>		Glendale, CA 91203
Haeji Hong		
Office of the US Trustee		
402 West Broadway, Suite 600		
San Diego, CA 92101-8511		

I am readily familiar with the business practices of Pyle Sims Duncan and Stevenson for the collection and processing of correspondence for mailing with the United States Postal Service. Correspondence is deposited with the United States Postal Service on the same day it is collected and processed in the ordinary course of business.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 13, 2014 at San Diego, California.

/s/ Theresa A. Moser

Theresa A. Moser
401 B Street, Suite 1500
San Diego, CA 92101